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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,925	03/15/2002	David Soumekh	7187-101-US	2746

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Law Offices of Clark D. Gross
Suite 300
12304 Santa Monica Boulevard
Los Angeles, CA 90025-2593

EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/099,925

Applicant(s)

SOUMEKH, DAVID

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-15,18 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-15,18 and 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. The Amendment filed January 19, 2005 has been entered. Claims 3, 16, 17, 19, 20 have been cancelled and claims 21-28 have been added. Claims 1, 2, 4-15, 18, 21-28 remain pending.

2. It is noted that claims 4-12 depend from now cancelled claim 3. Based on Applicant's response, it is understood that Applicant intended claims 4-12 to remain pending. To expedite prosecution, those claims depending from cancelled claim 3 are presumed to be dependent from claim 1, since the limitations of claim 3 are now included in claim 1. Additionally, it is pointed out that under this presumption claims 2 and 7 are duplicate claims.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 11, 12, 23 and 27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. Regarding claims 11 and 12, claim 1 recites "general stiff", but claim 11 recites an expandable container and claim 12 recites a pleated configuration permits expansion

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upon contact with the liquid. First, as disclosed, there appears to be two embodiments: (1) a rigid tube and (2) a pleated or gusseted tube (e.g. Figures 6 and 7). There does not appear to be a rigid pleated tube. Second, it is unclear how a material can be "generally stiff", yet still be expandable upon contact with liquid.

6. Regarding claims 23 and 27, although in the admission of the prior art, Applicant discloses the problems of the filling instant coffee and sugar packages, Applicant does not disclose either instant coffee or the combination of sugar and instant coffee in use with the present invention.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1,2,4-15,18,21-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "generally stiff" in claims 1 and 18 is a relative term which renders the claim indefinite. The term "generally stiff" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For examination purposes, the term "generally stiff" will be understood to mean "stiffened so as to be capable of acting also as a stirring rod" as disclosed in Applicant's specification.

Claim Rejections - 35 USC § 102

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1,13,14,18,21-23, and 25- 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Gorin (US 3946652) , as evidenced by Andre et al. (US 3625704).

11. Regarding claims 1,13,14,18,21-23, and 25- 27, Gorin teaches a sealed device (i.e. sealed via flaps 44 seal opening 44) for supplying the essences of infusible and water soluble potable matter, such as instant coffee granules as recited in claims 14,22,23,26,27, and tea as recited in claims 21 and 25, wherein the plastic spoon is unitarily formed, self-supporting/generally stiff to be used as a stir rod as recited in claim 13, and provided with pores that form a screen in which the pores are sized such that liquid can pass in and out of the device (i.e. are sized and have the density to eliminate the effect of surface tension) and prevent particles from falling out of the device, as recited in claims 1 and 18 (Column 1, line 55 to Column 2, line 10, Column 2, lines 35-48, Column 3, lines 5-10, 25-40, Column 3, line 59 to Column 4, line 6, Column 4, lines 41-66) . Although Gorin teaches the pores that are sized smaller than the material, Gorin is silent in teaching the pores are micropores sized smaller than the tea per se. However, as evidenced by Andre et al., instant coffee particles may range depending on the particular form, anywhere from spherical particles with 178-762 microns or preferably sized similarly to conventional ground coffee size of 381-1524 microns (Column 1, lines 50-72). Thus, Gorin, by teaching the holes are sized to contain instant coffee, as evidenced by Andre et al., Gorin inherently teach the holes are micropores.

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12. Claims 1,8,9,11-14,18, 21,22,25,26, are rejected under 35 U.S.C. 102(b) as being anticipated by Fornari (US 4229481).

13. Regarding claims 1, 8,9,11-14,18, 21,22,25,26, Fornari teaches a sealed device for supplying the essences of infusible material into a liquid comprising a unitary tubular self supporting generally stiff (i.e. capable of being used as a stirrer as stated in Column 7, lines 19-27) pleated configuration with sides that are lap sealed upon themselves that expands when it contacts water and comprising micropores smaller than the nominal size of infusible matter such as ground coffee or tea wherein the pores sizes and densities are such that liquid is permitted to flow into and out of the device as it is moved up and down within the water. Fornari teaches using conventional filter paper for a tea sachet, and thus inherently teaches micropores (Column 1, lines 10-36, Column 2, lines 32-43, Column 3, line 65 to Column 4, line 60, Column 5, lines 4-13,58-66, column 6, lines 21-43, Column 7, lines 13-27, Figure 2 shows the folds and seals)

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fornari (US 4229481) as applied to claims 1, 8,9,11-14,18, 21,22,25,26 above, further in view of Newman et al. (EP 0158511).

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16. Fornari teaches a conventional filter paper for tea sachets can be used with a layer of thermoplastic adhesive coating for sealing (column 5, lines 4-12) but is silent in teaching a woven membrane with polypropylene fibers as recited in claims 4-6.

Newman et al. teach tea infuser devices preferably comprises woven paper fibers mixed with polypropylene fibers because this will render the paper material heat sealable (Abstract. Page 2, line 1 to 25). Therefore, it would have been obvious to further modify the paper filter sachet material of Fornari and include woven paper fibers with polypropylene fibers since this will provide a heat sealability to a conventional filter paper. One would have been substituting one conventional means for providing heating seal (i.e. including polypropylene fibers) for a paper filter for another (thermoplastic coating) for the same purpose: sealing an infusible material containing structure.

17. Claims 15, 24, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorin (US 3946652) as evidenced by Andre et al. (US 3625704) as applied to claims 1, 13, 14, 18, 21-23, and 25-27 above, further in view of Barnett (US 2791505).

18. Barnett also teaches a sealed device for supplying the essences of infusible and water-soluble potable matter into liquid with sizes and densities such that permeation occurs easily and are smaller than the material held in the device, including coffee and tea. Barnett further teach such devices are also suitable for soluble medicinal matter as recited in claims 15, 24, 28 (Column 1, lines 15-34, Column 2, lines 53-65, Column 4, lines 25-36). Therefore, it would have been obvious to modify Gorin depending on the particular desired purpose of the liquid (i.e. beverage or medicine), since Barnett

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teaches sealed devices for supplying the essences of infusible and water soluble potable matter into liquid, such as including coffee and tea, with sizes and densities such that permeation occurs easily and are smaller than the material held in the device , are also suitable for being used with soluble medicinal matter.

19. Claims 1, 8-10,13,14,18,21-23,25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Popkes (US 4338338) in view of Heusinkveld (US 3640727)

20. Regarding claims 1,8-10,13,14,18,21-23,25-27 Popkes teaches granular tea or coffee that are either water soluble or infusible in a unitary, generally stiff stir-tube made of a stir-tube made of foil with an inside plastic laminate, having an outside adhesive plastic seal to protect the ingredients from moisture during storage, having a lap seal, (e.g. item 51) or may include other seals such as fin seals (note column 8 lines 39-61 in light of the embodiment of Figures 8-10) wherein the perforations that are sized and have densities to encourage the conveyances of essences (i.e. the perforations are provided the access of the extracting liquid to the extractable material as described in Column 7, lines 38-48), as recited in claims 1,8-10,13,14,18 21-23,25-27 (column 1, line 55 to Column 2, line 2, Column 2, lines 9-35, Column 4, lines 23-25,63-68, Figures 8-10 , Column 6, line 39 to Column 7, line 56, Column 8, lines 39-61). However, while Popkes teaches a third plastic teaches a seal for covering the perforations that is for protecting the infusible material during storage, but Popkes is silent in teaching the micropores are smaller than the nominal size of the matter of infusible material and does not teach , as recited in claims 1 and 18.

21. Heusinkveld teaches a coffee brewing packet. Heusinkveld teaches when coffee brewing packets are used with flaked and ground coffee, the pores should be less than 1000 microns to prevent the coffee from sifting out of the packet during agitation of the packet and prevent a high level of sediment in the brewed coffee (Abstract, Column 4, lines 54-75, Column 6, line 64 to Column 7, line 8). Therefore, it would have been obvious to modify Popkes, depending on the type of coffee selected (i.e. water soluble or infusible flaked coffee), and select a micro-porous sized material since Heusinkveld teaches when coffee brewing packets are used with flaked and ground coffee, the pores should be less than 1000 microns to prevent the coffee from sifting out of the packet during agitation of the packet and prevent a high level of sediment in the brewed coffee.

22. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Popkes (US 4338338) in view of Heusinkveld (US 3640727), as applied to claims 1, 8-10,13,14,18,21-23,25-27 above, further in view of Seward et al. (US 4886674).

23. Popkes teaches aluminum foil with a polymer coated inner layer for sealing and outside layer of plastic adhered over the holes such that the infusible material is protected during storage, but Popkes is silent in teaching the entire device comprises a trilaminate. Seward et al. also teach a device for making tea or coffee and teach including a tri-laminate with layers of polymer about an aluminum layer will provide water and air barrier protection (Column 1, line 63 to Column 2, line 14) and Column 3, lines 1—2,18-25). Therefore, it would have been obvious to modify Popkes and include an outer layer of polymer laminated to the exterior of the foil since Seward et al. teach to

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protect infusible material from water and air, a sachet wall should comprise an outer polymeric layer, and Popkes teaches the infusible material needs to be protected during storage.

Response to Arguments

24. Applicant's arguments filed January 19, 2005 with respect to the rejections of claims 1,13,14,18 under 35 U.S.C. 102(b) as being anticipated by Burkett (US 5866185), claims 1,3,8,9,11-14,18 under 35 U.S.C. 102(b) as being anticipated by Lamb et al. (US 2123054), claims 1-3, 7-10, 13,14,18 under 35 U.S.C. 102(b) as being anticipated by Popkes (US 4338338), claims 1 -7,13,14,18 under 35 U.S.C. 102(b) as being anticipated by Newman et al. (EP 0158511), and claims 1,3,14,15,18 under 35 U.S.C. 102(b) as being anticipated by Barnett (US 2791505) have all been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, new grounds of rejection have been made as set forth above.

Conclusion

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

26. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

28. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

29. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen *Ram*
Examiner
Art Unit 1761

Milton I. Cano

RAM

MILTON I. CANO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1761